

In re ) Fair Hearing No. 21,202  
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Appeal of )

Petitioner requests that her case not be dismissed for failure to prosecute her action.

Petitioner filed for fair hearing on or about November 15, 2007 seeking prior authorization for Medicaid payment of transportation to a pool for self-directed aqua therapy. A fair hearing convened on December 5, 2007 in which petitioner presented partial testimony and made a motion for consideration of her request under M108 (coverage of services not included under Medicaid coverage). Petitioner provided additional medical documentation at the hearing.<sup>1</sup>

<sup>1</sup> The majority of her documentation dealt with her prior medical history. There were a few letters in support of aqua therapy by medical providers; these notes were cursory in nature.

petitioner had received Medicaid payment for transportation in the past.

The hearing officer sent a memo dated December 10, 2007 to the parties. The Office of Vermont Health Access (OVHA) was asked to check their records regarding petitioner's allegations of past Medicaid payment for transportation. The petitioner was informed that she could supplement her medical records by having her medical providers send more detailed information. OVHA checked their records and indicated that Medicaid had not covered the costs in the past.

On December 19, 2007, petitioner requested a continuance and the telephone status conference was reset for January 4, 2008. After the status conference, the hearing officer sent the parties a memo dated January 8, 2008. The petitioner was sent copies of the pertinent regulations and informed that she needed to submit more detailed and specific reasons why she needed aqua therapy. The case was rescheduled for an evidentiary hearing on February 20, 2008.

On February 19, 2008, petitioner requested a continuance because she was hospitalized in Massachusetts. The case was rescheduled for March 26, 2008, and subsequently rescheduled for April 23, 2008. On April 23, 2008, an employee of the

local transportation service telephoned the Board to indicate that petitioner could not attend the hearing due to physical problems nor participate by telephone because her phone was not working. The case was continued to May 13, 2008. On the hearing notice, petitioner was advised there would be no further continuances.

Petitioner did not appear for the May 13, 2008 hearing. The Board sent petitioner a letter on May 28, 2008 notifying her that her case would be dismissed unless she responded within seven days with good reasons. This letter was resent on June 2, 2008 after the post office returned the original letter with petitioner's new mailing address.

Petitioner faxed a response to the Board on June 11, 2008 stating she did not receive notice of the May 13, 2008 hearing. OVHA filed a memorandum in opposition. The Board records indicate that petitioner was properly sent written notice of the May 13, 2008 hearing.

The Board extended petitioner several continuances to allow her to obtain additional documentation for her case. Her original documentation was skimpy. In both prior authorization and M108 cases, the burden of proof is on the petitioner to show the medical need for the requested services. Despite these continuances, petitioner did not

supply additional information. Further, petitioner did not attend the May 13, 2008 hearing despite notification there would be no further continuances. Her response to the Board's last letter was late.

ORDER

The petitioner's case is dismissed.

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